
EXPEDITED FUNDS AVAILABILITY ACT

(REGULATION CC)

OVERVIEW

Overview

Regulation CC implements the requirements of the Expedited Funds Availability Act (EFAA). The purpose of the regulation is to ensure prompt availability of funds and to expedite the return of checks.

The major provisions of Regulation CC:

- Establish maximum holds that credit unions can place on deposits; and
- Require credit unions to disclose their funds availability policies to members.

In general, deposited funds fall into one of three categories of availability.

Next Day Availability

Certain types of funds must be made available for withdrawal not later than the business day after the banking day the funds were deposited. The following types of funds generally meet the standards for next-day availability:

- Cash deposits made in person to an employee of the credit union.
- Electronic payments.
- Checks drawn on the Treasury of the United States or a state or local government.
- U.S. Postal Service money order.
- Cashier's, certified, or teller's check.
- Check drawn on a Federal Reserve Bank or Federal Home Loan Bank.
- Checks deposited in a branch of the credit union and drawn on the same or another branch of the same credit union if both branches are located in the same state or the same check-processing region.

In most cases, the types of funds listed above must be deposited in person to an employee of the credit union and in an account of the payee.

Second Day Availability

Except as provided under "exceptions" below, a credit union must make funds deposited in an account by check available for withdrawal not later than the second business day following the banking day the funds are deposited, in the case of:

- A local check;
- A check drawn on the Treasury of the United States that is not governed by the next-day availability requirements;
- A U.S. Postal Service money order that is not governed by the next-day availability requirements
- A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to is a local check that is not governed by the next-day availability requirements.

Fifth Day Availability

Except as provided under "exceptions" below, a credit union must make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day funds are deposited, in the case of:

- A non local check;
- A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; or a check deposited in a branch of the depository credit union and drawn on the same or another branch of the same credit union; if any check referred to is a nonlocal check that is not governed by the next-day availability requirements; and funds deposited in an account at a nonproprietary ATM by cash or check.

Exceptions

Exceptions to the availability schedule apply in the case of:

- Withdrawal by cash or similar means;
- New accounts;
- Large deposits (\$5,000 or greater);
- Redeposited checks;
- Repeated overdrafts;
- Reasonable cause to doubt collectibility; and,
- Emergency conditions.

Payment of Interest

A credit union shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the credit union receives credit for the funds unless the credit union meets the Special Rule for Credit Unions in §229.14(b). This provision provides an exemption from the payment of interest requirements for credit unions that do not begin to accrue interest or dividends on their member accounts until a later date than the day the credit union receives credit for those

deposits, including cash deposits. The credit union is exempt from the payment of interest requirements, as long as it provides notice of its interest accrual policies in accordance with §229.16(d) (must contain an explanation of when interest or dividends on deposited funds begin to accrue).

The EFAA limits this exemption to credit unions; other types of financial institutions must comply with the payment of interest requirements. In addition, credit unions that compute interest from the day of deposit or day of credit should not change their existing practices in order to avoid compliance with the requirement that interest accrue from the day the credit union receives credit.

Disclosure Requirements

A credit union shall make disclosures clearly and conspicuously in writing. Disclosures, other than those posted at locations where employees accept consumer deposits and ATMs and the notice on preprinted deposit slips, must be in a form that the member may keep. The disclosures shall be grouped together and shall not contain any information not related to the disclosures. If contained in a document that sets forth other account terms, the disclosures shall be highlighted within the document.

Associated Risks

- Transaction risk can occur when proper “holds” are not enforced, resulting in a loss to the credit union,
- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Regulation CC, and
- Reputation risk can occur when the credit union incurs fines and penalties or receives decreased member confidence as a result of failure to comply with Regulation CC.

Additional Information

Additional information is available on the Federal Reserve Board’s website at <http://www.federalreserve.gov/>

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OPERATIONAL REQUIREMENTS

Disclosures / Notices

New Account Availability Disclosure [Sections 229.16(b) and 229.17]

Potential members must be provided with a specific availability policy disclosure prior to opening an account. The content of this disclosure must follow the requirements of Section 229.16, which describes the policy as to when funds deposited in an account are available for withdrawal.

Requesting an Account Availability Disclosure [Section 229.18(d)]

A credit union must provide a copy of its specific availability policy disclosure described in Section 229.16 to any person, upon oral or written request.

Notice of Case-by-Case Holds [Section 229.16 (c)(1) and (2)]

A credit union that has a policy of making deposited funds available for withdrawal sooner than required by the regulation may extend the time when funds are available up to the time periods allowed if:

- (1) the credit union provides notice of the possible extension of time for the withdrawal of deposited funds on a case-by-case basis within its specific availability policy disclosure as described in Section 226.16(c)(1); and
- (2) the credit union provides a written notice to the member when it actually extends the time when funds will be available on a case-by-case basis for withdrawal in the manner prescribed by Section 229.16(c)(2).

Notice of Exception Hold [Section 229.13(g)]

A credit union extending the time when funds will be available for withdrawal based on the application of an exception contained in Section 229.13(b)(f), must provide the depositor with a written notice as described therein. These exceptions include large deposits, redeposited checks, repeated overdrafts, reasonable cause to doubt collectibility, and emergency conditions.

Deposit Slip Notice [Section 229.18(a)]

A notice must be included on all preprinted deposit slips furnished to members which provides that deposits may not be available for immediate withdrawal.

Lobby Notice [Section 229.18(b)]

A credit union must post a notice in a conspicuous place in each location where its employees accept deposits to consumer accounts which sets forth the time periods applicable to the availability of funds deposited in a consumer account.

Automated Teller Machine Notice [Section 229.18(c)]

A credit union must post a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

Credit unions operating an off-premises ATM from which deposits are not removed more than two times each week must disclose at or on the ATM the days on which deposits made at the ATM will be considered received.

Notice of Changes in Policy [Section 229.18(e)]

A credit union must deliver a notice to holders of consumer accounts at least 30 days prior to implementing a change to its availability policy regarding such accounts, except that a change resulting in expedited availability may be disclosed not later than 30 days after implementation.

Notice of Nonpayment [Section 229.33(d)]

A credit union receiving a returned check or notice of nonpayment must send notice to its member of the facts by midnight of the banking day following the banking day that it received the returned check or notice, or within a longer reasonable time.

Written Programs / Documentation

Procedures for Employee Training and Compliance [Section 229.19(f)]

A credit union must establish and maintain procedures to ensure its compliance with the regulation. It must also provide a statement of applicable portions of the procedures to employees who perform tasks subject to the requirements of the regulation.

Recordkeeping

Record Retention [Section 229.21(g)]

A credit union must retain evidence of compliance with the regulation for at least two years. This record-retention period may be extended in the event of civil actions and enforcement proceedings brought against the credit union.

Enforcement / Liability

Administrative Enforcement Authority [Section 229.3(a)(3)]

The National Credit Union Administration has responsibility for enforcement among both federal and state-chartered credit unions.

Civil Liability [Section 229.21]

Civil liability may be imposed against a credit union for failure to comply with the regulatory requirements in an amount equal to actual damages sustained, additional amounts of up to \$1,000 per individual action, and reasonable attorney's fees. In the case of a class action, recovery may not exceed the lesser of \$500,000 or one percent of the net worth of the credit union.

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REVIEW CONSIDERATIONS

Review Considerations

Review Area	Requirements / Recommendations
Policies / Procedures	Adopt a policy for implementing Regulation CC. Establish procedures ensuring the credit union is in compliance with all regulatory requirements.
Funds Availability Policy	<p>Prepare the Specific Availability Disclosure and distribute to potential members prior to opening a new transaction account or to any person upon request.</p> <p>Describe the credit union's policy as to when funds deposited in an account are available for withdrawal.</p> <p>Disclosures must be clear and conspicuous and in a form that members may keep.</p> <p>Ensure funds are available in accordance with Regulation CC and the credit union's policy and procedures.</p>
Notices of Changes in Availability Policy	Provide notices to existing holders of consumer accounts either prior to, or in some cases, after implementing a change to the availability policy.
Notice of Funds Availability	Ensure proper notices are provided on deposit slips, at teller areas, and at ATM locations.
Case-by-Case Holds	Provide notice when case-by-case holds are placed on deposited funds and includes information regarding member account number, date of deposit, amount of deposit being delayed, and date funds will be available for withdrawal.
Exception Holds	Provide written notice when exception holds are placed on deposited funds. Exception holds include: large deposits, repeated overdrafts, reasonable cause to doubt collectibility, and emergency conditions.
New Account Holds	Holds may be placed on certain types of funds deposited into new accounts.
Notices Involving One-Time	One-time notices may be provided for exceptions

Exception and Repeated Overdrafts	based on large deposits or redeposited checks, under certain circumstances.
Payment of Interest	Interest on funds deposited into an interest-bearing account must begin to accrue interest not later than the business day provisional credit is received unless the credit union meets the conditions under the Special Rule for Credit Unions.
Training	Provide training to all employees performing duties subject to Regulation CC.
Record Retention	Retain evidence of compliance with the regulation (including documentation supporting reasonable cause holds) for at least two years.

EXPEDITED FUNDS AVAILABILITY ACT CHECKLIST

	Yes	No
Operations		
<u>Date of Deposit</u>		
1. Does the credit union have a cut-off, for receipt of deposits, of 2 p.m. or later for offices and 12 noon or later for ATMs? [§ 229.19(a)(5)(ii)]	_____	_____
2. Does the credit union consider every day except Saturday, Sunday, or Federal Holidays, as a "business day"? [§ 229.2(g)]	_____	_____
3. Does the credit union consider as a "banking day," only those business days upon which an office of the credit union is open for substantially all of its business? [§229.2(f)]	_____	_____
4. Does the credit union consider a deposit to be made:		
a. on the date it is received by the credit union either by mail, over the counter or at ATMs? [§§229.19(a)(1)and (2)]	_____	_____
b. when the deposits are removed from the night depository, lock box, or similar facility and are available for processing? [§ 229.19(a)(3)]	_____	_____
c. as of the date the deposits are removed by the credit union from an off-premise ATM (not within 50 feet of the credit union) that is not serviced more than twice a week? [§ 229.19(a)(4)]	_____	_____
d. on the next "banking day" when the deposit is made on a day that is not a "banking day"? [§229.19(a)(5)(i)]	_____	_____
e. on the next "banking day" when the deposit is received at 2 p.m. or later in credit union offices or 12 p.m. or later at ATMs or off-premise facilities? [§229.19(a)(5)(ii)]	_____	_____
5. Does the credit union start its "business day" (for the purposes of funds availability) at the later of 9 a.m. or at the time the credit union's teller facilities (including ATMs) are available for account withdrawals? [§§229.19(b)(1)and (2)]	_____	_____

Required Next Day Availability

6. Does the credit union make funds deposited on a "banking day" available on the following "business day" for the following types of deposits:

a. Electronic payments? [§229.10(b)]

b. Checks drawn on the U.S. Treasury and deposited to the payee's account? [§229.10(c)(1)(i)]

c. "On Us" checks or checks that are drawn on and deposited in branches of the same credit union in the same state or check processing region?
[§229.10(c)(1)(vi)]

7. Does the credit union make funds from the following deposits available no later than the first business day after the day of the deposit, if the deposit is made in person to a credit union employee, or no later than the second business day if the deposit is not made in person to a credit union employee:

a. Cash deposits? [§229.10(a)(1) and (2)]

b. U.S. Postal Service money orders deposited in an account held by the payee of the check?
[§229.10(c)(1)(ii)]

c. Checks drawn on a Federal Reserve Bank or Federal Home Loan Bank deposited in an account held by the payee of the check? [§229.10(c)(1)(iii)]

d. Checks drawn by a state or local governmental unit and deposited:

- in an account held by the payee of the check

[§229.10(c)(1)(iv)(A)];

- in a depository institution located in the same state as the governmental unit issuing the check [§229.10(c)(1)(iv)(B)];

- in person to an employee of the credit union

[§229.10(c)(1)(iv)(C)];

- and accompanied by a special deposit slip or deposit envelope (if required by the credit union to make the funds available on the next business day)?

[§229.10(c)(1)(iv)(D)].

The credit union may either provide the special deposit slips or deposit envelopes to its members, or inform its members how the slips or envelopes may be prepared or obtained. Any such slips or envelopes must be readily available. [§229.10(c)(3)(ii)]

e. Cashier's checks, certified checks, teller's checks (as

defined in §229.2) deposited in an account held by the payee of the check when the check is accompanied by a special deposit slip or deposit envelope (if required by the credit union to make the funds available on the next business day)? [§229.10(c)(1)(v)]

8. If the credit union requires the special deposit slip or deposit envelope, does it provide it to its members, or inform its members how to prepare or obtain the slips or envelopes? [§229.10(c)(3)(ii)]

Are the special deposit slips reasonably available? [§229.10(c)(3)(ii)]

9. Does the credit union make available the first \$100 of a day's aggregate check deposits not subject to the next-day availability rules, on the next "business day"? [§229.10(c)(1)(vii)]

10. Is the \$100 in addition to other deposited amounts with required next day availability? [§229.10(c)(1)(vii)]

Local Checks and Certain Other Deposits

11. Are funds from deposited local checks generally available no later than the second "business day" after the "banking day" of deposit? [§229.12(b)(1)]

12. Does the credit union make funds available no later than the second business day after the date of deposit for the following (if they do not meet the criteria for next-day or second day availability)? [§229.12(b)(2) and (3)]

- Treasury Checks
- U.S. Postal money orders
- Checks drawn on the Federal Reserve Bank or the Federal Home Loan Bank
- Checks drawn by state or local government
- Cashier's checks, certified checks or teller's checks

13. Are funds deposited by cash or check at a nonproprietary ATM available no later than the fifth business day after the banking day of deposit? [§229.12(f)]

14. If a credit union limits cash withdrawals: [§229.12(d)]

a. is the \$100 available on the next business day after

the day of deposit for withdrawal in cash or by check?

b. is the \$400 available for cash withdrawal sometime before 5 p.m. on the second business day after the day of deposit?

c. are any remaining funds available for withdrawal the business day after the \$400 was made available?

_____	_____
_____	_____
_____	_____

Nonlocal Checks

15. Are funds from deposited nonlocal checks generally available for withdrawal no later than the fifth "business day" after the "banking day" of deposit?
[§229.12(c)(1)(i)]

_____	_____
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16. If the credit union is located in a city listed in Appendix B, does it have procedures to make funds for nonlocal checks available on a shorter schedule as required by the Appendix? [§229.12(c)(2)]

_____	_____
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17. If the credit union limits cash withdrawals: [§ 229.12(d)]

a. is \$100 available on the next business day after the day of deposit for withdrawal in cash or by check?

b. is \$400 available for cash withdrawal sometime before 5 p.m. on the fifth business day after the day of deposit?

c. are any remaining funds available for cash withdrawal the business day after the \$400 was made available?

_____	_____
_____	_____
_____	_____

18. Does the credit union disclose how a customer can distinguish between a proprietary and a nonproprietary ATM in its specific availability policy and disclosure?
[§229.16(b)(5)]

_____	_____
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Extended Holds

Case-by-Case Holds

19. Does the credit union's specific availability policy disclosures indicate that case-by-case holds may be placed? [§229.16(b)(4)]

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20. When case-by-case holds are placed, does the credit union provide the member with a written notice of the hold? [§229.16(c)(2)(i)]

_____	_____
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21. Does the notice include:

a. the member's account number? [§229.16(c)(2)(i)(A)]

b. the date of the deposit? [§229.16(c)(2)(i)(B)]

c. the amount of the deposit that is being delayed?

[§229.16(c)(2)(i)(C)]

d. the day the funds will be available for withdrawal?

[§229.16(c)(2)(i)(D)]

22. Does the credit union provide the notice at the time the deposit is made, if the deposit is made to an employee of the depository credit union? [§229.16(c)(2)(ii)]

23. If the notice is not given at the time of deposit, does the depository credit union mail or deliver the notice to the member not later than the first business day following the banking day the deposit is made? [§229.16(c)(2)(ii)]

24. If the credit union does not provide the notice at the time of the deposit upon extending the time when funds will be available for withdrawal on a case-by-case basis or a reasonable cause to doubt collectibility basis, does it refrain from charging the member overdraft or return check fees if: [§229.13(e)(2) and §229.16(c)(3)]

a. the overdraft or other fee would not have occurred if the deposited check had not been delayed; and

b. the deposited check was paid by the paying bank?

25. If the credit union does not provide the notice at the time of deposit and charges overdraft fees, does it notify the member of the right to a refund of such fees and how to obtain the refund? [§229.16(c)(3)]

a. Does the credit union refund the fees if the conditions listed in question 24 above are met and the member requests a refund? [§229.16(c)(3)]

Exception Based Holds

26. When invoking an exception hold for other than new accounts, does the bank provide the member with a written notice which includes:

a. the member's account number? [§229.13(g)(1)(i)(A)]

- b. the date of deposit? [§ 229.13(g)(1)(i)(B)] _____
- c. the amount of the deposit that is being delayed? _____
[§229.13(g)(1)(i)(C)] _____
- d. the reason the exception was invoked? _____
[§229.13(g)(1)(i)(D)] _____
- e. the time period within which the funds will be available for withdrawal (unless the emergency conditions exception is invoked and the credit union does not know when the funds will become available)? [§229.13(g)(1)(i)(E)] _____

27. Does the credit union refrain from delaying funds availability beyond a reasonable time period?
[§229.13(h)(4)] _____

Note: An extension of up to 5 business days for local checks and 6 days for nonlocal checks is reasonable.

Exceptions

New Accounts

28. Does the credit union's definition of a new account comply with the definition under §229.13(a)(2)? _____

Note: If a member has had another account at the credit union within 30 calendar days before opening an account, the member does not qualify for the "new account" exception. [§229.13(a)(2)]

29. Are cash deposits made in person to a credit union employee made available for withdrawal on the first business day following the banking day of deposit?
[§229.13(a)(1)(i)] and [§229.10(a)(1)] _____

30. Are cash deposits not made in person to a credit union employee available for withdrawal on the second business day following the banking day of deposit? [§229.13(a)(i)] and [§229.10(a)(2)] _____

31. Are electronic payments (including wire transfers and ACH credit transfers) into new accounts available for withdrawal on the business day following the banking day on which the transfer is received? [§229.13(a)(1)(i)] and [§229.10(b)(1)] _____

32. Is the first \$5,000 from any of the following types of

check deposits available for withdrawal from a new account not later than the first business day after the banking day on which the funds are deposited, if the deposit is subject to §229.10(c):

[§229.13(a)(1)(ii)]

- a. Treasury checks? [§229.10(c)(1)(i)]
- b. U.S. Postal service money orders? [§229.10(c)(1)(ii)]
- c. Federal Reserve or Federal Home Loan Bank checks? [§229.10(c)(1)(iii)]
- d. State or local government checks? [§229.10(c)(1)(iv)]
- e. Cashier's, Certified and Teller's checks? [§229.10(c)(1)(v)]

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

33. Is the amount of any deposit type listed in question 32 exceeding \$5,000 available for withdrawal no later than the ninth business day following the banking day on which funds are deposited? [§229.13(a)(1)(ii)]

_____	_____
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Large Deposits

34. If the credit union invokes the large deposit rule, does it do so only to that portion of local and nonlocal deposits which in the aggregate exceed \$5,000 on any one banking day? [§229.13(b)]

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35. Does the credit union refrain from applying this exception to deposits made in cash, by electronic payment, or to checks which must receive next day availability under Section 229.10(c)? [Commentary to §229.13(b)]

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36. Does the credit union provide members with a written notice of the longer delay? [§229.13(g)(1)]

_____	_____
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Is the notice: [§229.13(g)(1)(ii)]

- a. provided at the time of the deposit, when the deposit is received in person by an employee of the bank, or
- b. mailed on or before the first business day after the day the bank learns of the facts giving rise to the exception?

_____	_____
_____	_____

Redeposited Checks

37. Does the credit union refrain from applying the redeposited exception to:

a. checks which are returned due to a missing endorsement and are subsequently endorsed and redeposited?

[\$229.13(c)(1)]

b. checks which were returned because they were postdated, but are not postdated when redeposited?

[\$229.13(c)(2)]

38. Does the credit union consider the day the check was redeposited to be the day of deposit when determining when funds must be made available for withdrawal?

[Commentary to §229.13(c)]

Repeated Overdrafter Exception

39. Does the credit union lengthen its availability schedule for depositors who have a history of overdrafts?

If yes, complete the rest of the section, if no, skip to next section.

Note: A depository credit union may consider a member's account to be repeatedly overdrawn if (1) within the last six months, on six or more banking days, the account balance is negative, or would have been negative had checks or other charges been paid or (2) within the last six months, on two or more banking days, the account balance is negative, or would have been negative in the amount of \$5,000 or more had checks or other charges been paid.

40. Is this practice articulated in the credit union's written policy and initial disclosure statement? [§229.16(b)(3)] and [§229.16(a)]

41. When the credit union imposes the longer delay period, is the depositor notified of the reason, in writing, at the time of deposit? If not, is a notice mailed on or before the first business day after the day of the deposit or the day the credit union learns of the facts giving rise to the exception? [§229.13(g)(1)(ii)]

42. Does the credit union invoke the repeated overdraft exception only when the account balance is negative (or would have been negative had checks or other charges been paid):

a. on 6 or more banking days within the preceding 6

months? [§229.13(d)(1)] or

b. on 2 or more banking days within the preceding 6 months, if the amount of any negative balance would have been \$5,000 or more? [§229.13(d)(2)]

43. Does the credit union return to the normal availability schedule when the account is no longer repeatedly overdrawn?

Reasonable Cause to Doubt Collectibility

44. When the credit union invokes a reasonable cause exception, does it provide the member with a written notice of exception at the time the deposit was made, if the deposit was made in person to an employee of the credit union? [§229.13(g)(1)(ii)]

45. If the deposit was not made in person to an employee of the bank, or if the hold was placed because of information learned subsequent to the receipt of the deposit, does the credit union mail the exception notice to the member? [§229.13(g)(1)(ii)]

46. Does the credit union retain copies of each reasonable cause exception notice, along with a brief statement of the facts which lead to the hold, for a period of 2 years? [§229.13(g)(5)]

47. Does the depository credit union refrain from invoking the reasonable cause exception based on the race or national origin of the depositor or the class of the check? [Commentary to §229.13(e)]

48. Does the credit union refrain from assessing a fee for any subsequent overdraft, returned check, or other unpaid charge (or advise members of their right to a refund of such fees and refund them upon request) if all of the following are met:

a. the depository credit union extended the availability period based on its belief that the check was uncollectible [§229.13(e)(1)];

b. the depositor was not provided with the written notice required by §229.13(g)(1) at time of deposit [§229.13(e)(2)];

c. the overdraft or return would not have occurred

except for the fact that the deposited funds were delayed [§229.13(e)(2)(i)];

d. the deposited check was paid by the paying bank? [§229.13(e)(2)(ii)]

49. Does the exception notice inform the member where to direct a request for a refund of the overdraft fees?

Emergency Conditions

50. Does the credit union invoke the emergency conditions exception only in the following circumstances when the credit union has exercised such diligence as the circumstances require: [§229.13(f)]

a. An interruption of communications or computer or other equipment facilities,

b. Suspension of payments by another bank,

c. War, or

d. An emergency condition beyond the control of the credit union when the credit union has exercised such diligence as the circumstances require?

51. Does the credit union make funds available for withdrawal no later than a reasonable period after the emergency has ended or within the time period established in Sections 229.10(c) and 229.12, whichever is later? [§229.13(h)(3)]

Note: An extension of up to 5 business days for local checks and 6 days for nonlocal checks is reasonable.

52. Does the credit union provide members with a written notice of the delay in a reasonable form and within a reasonable time given the circumstances? [§229.13(g)(4)]

53. Does the notice include: [§229.13(g)(4)]

- the reason the exception was invoked, and
- the time period which funds are available for withdrawal (unless the credit union does not know, in good faith, at the time the notice is given the duration of the emergency and, when the funds must be made available).

Note: The credit union is not required to provide a notice if the

funds subject to the exception become available before the notice must be sent.

Miscellaneous

Calculated Availability – Nonconsumer Transaction Accounts [§229.19(d)]

54. Does the credit union calculate funds availability for nonconsumer accounts based on a sample of the member's deposits? If yes, obtain a copy of the credit union's formula for determining its availability schedule or interest accrual. Review a sample of checks similar to that used by the credit union to calculate funds availability and answer the following:

a. Is the sample of checks large enough to accurately utilize the formula?

b. Does the formula accurately represent the average composition of the member's deposits?

c. Does the specified percentage of available funds appear reasonable?

d. Is a set percentage available the next business day, with remaining funds available according to the member's deposit mix?

55. Based on the sample, are the terms of availability equivalent or more prompt than the terms outlined in §229.19?

56. Does the credit union display a notice of its availability policy in a conspicuous place at locations where employees receive member deposits? [§229.18(b)]

NOTE: Drive-up windows, night depositories, and locations where deposits are not taken do not require the notice.

57. Does the credit union display a notice at each of its proprietary ATMs stating that the funds deposited in the ATM may not be available for immediate withdrawal? [§229.18(c)(1)]

58. If the credit union has off-premise ATMs from which funds are not collected more than twice a week, does the credit union disclose on or at the ATM, the days on which the deposits made at the ATM will be considered “received.” [§229.18(c)(2)]

59. Does the credit union include a notice on all preprinted deposit slips that the deposited funds may not be available for

immediate withdrawal? [§229.18(a)]

Payment of Interest

60. Review the credit union's availability schedule or check deposits credited through the Reserve Bank or its correspondent. Determine the time that the credit union receives provisional credit for check deposits.

61. For each interest-bearing transaction account offered by the credit union, does the credit union begin to accrue interest on the funds deposited no later than the business day on which the credit union receives provisional credit for the funds? [§229.14]

a. If not, does the credit union follow the Special Rule for Credit Unions and provide notice of their accrual policies in accordance with §229.16(d)?

Deposits at Noncontinental U.S. Offices

The credit union may extend the time periods set forth in §229.12 by one business day in the case of any deposit, other than a deposit discussed in §229.10 (next day availability), that is:

- Deposited in an account at a branch of a depository credit union if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and
- Deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depository credit union.

62. For offices located in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands does the credit union extend availability for check deposits drawn on banks in other states? [§229.12(e)]

a. If yes, is the extension limited to one day? [§229.12(e)]

b. Is the extension available only for local checks, nonlocal checks and deposits at nonproprietary ATMs? [Commentary to §229.11(e)]

c. Is the extension limited to such deposits only if the paying credit union is in a different jurisdiction? [§229.12(e)(2)]

Comments: _____

EXPEDITED FUNDS AVAILABILITY ACT

(REGULATION CC)

DEFINITIONS

Definitions (Section 229.2)

Definitions used in this part, unless the context requires otherwise:

Account

A deposit as defined in Regulation D – Reserve Requirements of Depository Institutions, §204.2(a)(1)(i) that is a transaction account as described in Regulation D, §204.2(e). As defined in these sections, "account" generally includes accounts at a bank from which the account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, electronic payment, or other similar means for the purpose of making payments or transfers to third persons or others. "Account" also includes accounts at a bank from which the account holder may make third-party payments at an ATM, remote service unit, or other electronic device e, including by debit card, but the term does not include savings deposits or accounts described in §204.2(d)(2) even though such accounts permit third-party transfers. An account may be in the form of:

- (1) A demand deposit account,
- (2) A negotiable order of withdrawal account,
- (3) A share draft account,
- (4) An automatic transfer account, or
- (5) Any other transaction account described in §204.2(e).

"Account" does not include an account where the account holder is a bank, where the account holder is an office of an institution described in paragraphs (e) (1) through (e) (6) of this section or an office of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 USC 3101) that is located outside the United States, or where the direct or indirect account holder is the Treasury of the United States.

Automated clearinghouse or ACH

A facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on automated clearinghouse items or under rules of an automated clearinghouse association.

Automated teller machine or ATM

An electronic device at which a natural person may make deposits to an account by cash or check and perform other account transactions.

Available for withdrawal

Available for withdrawal with respect to funds deposited means available for all uses generally permitted to the customer for actually and finally collected funds under the bank's account agreement or policies, such as for payment of checks drawn on the account, certification of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

Bank

- (1) An "insured bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813) or a bank that is eligible to apply to become an insured bank under section 5 of that Act (12 USC 1815);
- (2) A "mutual savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813);
- (3) A "savings bank" as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813);
- (4) An "insured credit union" as defined in section 101 of the Federal Credit Union Act (12 USC 1752) or a credit union that is eligible to make application to become an insured credit union under section 201 of that Act (12 USC 1781);
- (5) A "member" as defined in section 2 of the Federal Home Loan Bank Act (12 USC 1422);
- (6) A savings association as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813) that is an insured depository institution as defined in section 3 of that Act (12 USC 1813(c)(2)) or that is eligible to apply to become an insured depository institution under section 5 of that Act (12 USC 1815); or
- (7) An "agency" or "branch" of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 USC 3101).

For purposes of subpart C of this part and, in connection therewith, subpart A, the term "bank" also includes any person engaged in the business of banking, as well as a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. Unless otherwise specified, the term "bank" includes all of a bank's offices in the United States, but not offices located outside the United States.

Banking day

That part of any business day on which an office of a bank is open to the public for carrying on substantially all of its banking functions.

Business day

A calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

Cash

United States coins and currency.

Cashier's check

A check that is:

- (1) Drawn on a bank;
- (2) Signed by an officer or employee of the bank on behalf of the bank as drawer;
- (3) A direct obligation of the bank; and
- (4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

Certified check

A check with respect to which the drawee bank certifies by signature on the check of an officer or other authorized employee of the bank that:

- (1) (i) The signature of the drawer on the check is genuine; and
(ii) The bank has set aside funds that-
 - (A) Are equal to the amount of the check, and
 - (B) Will be used to pay the check; or
- (2) The bank will pay the check upon presentment.

Check

- (1) A negotiable demand draft drawn on or payable through or at an office of a bank;
- (2) A negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;
- (3) A negotiable demand draft drawn on the Treasury of the United States;
- (4) A demand draft drawn on a state government or unit of general local government that is not payable through or at a bank;
- (5) A United States Postal Service money order; or
- (6) A traveler's check drawn on or payable through or at a bank.

The term "check" does not include a noncash item or an item payable in a medium other than United States money. A draft may be a check even though it is described on its face by another term, such as "money order." For purposes of subpart C, and in connection therewith, subpart A, of this part, the term "check" also includes a demand draft of the type described above that is nonnegotiable.

Check-processing region

The geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities.

Consumer account

Any account used primarily for personal, family, or household purposes.

Depository bank

means the first bank to which a check is transferred even though it is also the paying bank or the payee. A check deposited in an account is deemed to be transferred to the bank holding the account into which the check is deposited, even though the check is physically received and indorsed first by another bank.

Electronic payment

A wire transfer or an ACH credit transfer.

Forward collection

The process by which a bank sends a check on a cash basis to the paying bank for payment.

Local check

A check payable by or at a local paying bank, or a check payable by a nonbank payor and payable through a local paying bank.

Local paying bank

A paying bank that is located in the same check-processing region as the physical location of the branch, contractual branch, or proprietary ATM of the depository bank in which that check was deposited.

Merger transaction

- (1) A merger or consolidation of two or more banks; or
- (2) The transfer of substantially all of the assets of one or more banks or branches to another bank in consideration of the assumption by the acquiring bank of substantially all of the liabilities of the transferring banks, including the deposit liabilities.

Noncash item

An item that would otherwise be a check, except that:

- (1) A passbook, certificate, or other document is attached;
- (2) It is accompanied by special instructions, such as a request for special advice of payment or dishonor;
- (3) It consists of more than a single thickness of paper, except a check that qualifies for handling by automated check-processing equipment; or
- (4) It has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

Nonlocal check

A check payable by, through, or at a nonlocal paying bank.

Nonlocal paying bank

A paying bank that is not a local paying bank with respect to the depository bank.

Nonproprietary ATM

An ATM that is not a proprietary ATM.

Paying bank

- (1) The bank by which a check is payable, unless the check is payable at another bank and is sent to the other bank for payment or collection;
- (2) The bank at which a check is payable and to which it is sent for payment or collection;

- (3) The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;
- (4) The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank; or
- (5) The state or unit of general local government on which a check is drawn and to which it is sent for payment or collection. For purposes of subpart C, and in connection therewith, subpart A, "paying bank" includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection.

Proprietary ATM

An ATM that is:

- (1) Owned or operated by, or operated exclusively for, the depository bank;
- (2) Located on the premises (including the outside wall) of the depository bank; or
- (3) Located within 50 feet of the premises of the depository bank, and not identified as being owned or operated by another entity. If more than one bank meets the owned-operated criterion of paragraph (1) of this definition, the ATM is considered proprietary to the bank that operates it.

Qualified returned check

A returned check that is prepared for automated return to the depository bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink. A qualified returned check need not contain other elements of a check drawn on the depository bank, such as the name of the depository bank.

Returning bank

A bank (other than the paying or depository bank) handling a returned check or notice in lieu of return. A returning bank is also a collecting bank for purposes of UCC 4-202(b).

Routing number

- (1) The number printed on the face of a check in fractional form or in nine-digit form; or
- (2) The number in a bank's endorsement in fractional or nine-digit form.

Similarly situated bank

A bank of similar size, located in the same community, and with similar check-handling activities as the paying bank or returning bank.

State

A state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands.

Teller's check

A check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

Traveler's check

An instrument for the payment of money that:

- (1) Is drawn on or payable through or at a bank;
- (2) Is designated on its face by the term "traveler's check" or by any substantially similar term or is commonly known and marketed as a traveler's check by a corporation or bank that is an issuer of traveler's checks;
- (3) Provides for a specimen signature of the purchaser to be completed at the time of purchase; and
- (4) Provides for a countersignature of the purchaser to be completed at the time of negotiation.

Uniform Commercial Code, Code, or UCC

The Uniform Commercial Code as adopted in a state.

United States

The states, including the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

Unit of general local government

Any city, county, parish, town, township, village, or other general-purpose political subdivision of a state. The term does not include special-purpose units of government, such as school districts or water districts.

Wire transfer

An unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted by electronic or other means through the Fedwire, the Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. "Wire transfer" does not include an electronic fund transfer as defined in section 903(6) of the Electronic Fund Transfer Act (15 USC 1693a(6)).

Fedwire

The same meaning as in §210.6.

Good faith

Honesty in fact and observance of reasonable commercial standards of fair dealing.

Interest compensation

An amount of money calculated at the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest compensation is payable, divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the last preceding day for which there is a published rate.

Contractual branch

With respect to a bank, means a branch of another bank that accepts a deposit on behalf of the first bank.

Unless the context requires otherwise, the terms not defined in this section have the meanings set forth in the UCC:

Funds Availability Schedule (Existing Accounts)

Existing Accounts	Monday Day 0 B Day 0	Tuesday Day 1 B Day 1	Wednesday Day 2 B Day 2	Thursday Day 3 B Day 3	Friday Day 4 B Day 4	Monday Day 7 B Day 5	Tuesday Day 8 B Day 6	Wednesday Day 9 B Day 7	Thursday Day 10 B Day 8	Friday Day 11 B Day 9	Monday Day 14 B Day 10	Tuesday Day 15 B Day 11
Cash (1)	\$2,000	\$2,000										
Electronic Payment	\$2,000	\$2,000										
--US Treasury Check --US Postal Service Money Order (1) --Federal Reserve Bank check (1) --Federal Home Loan Bank (1) --State or local Govt Check (1) --Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$2,000	\$2,000										
On Us Check	\$2,000	\$2,000										
Local Check (Alternative 1)	\$2,000	\$100	\$1,900									
Local Check (Alternative 2)	\$2,000	\$100	\$400 (2)	\$1,500								
Non-local Check (Alternative 1)	\$2,000	\$100				\$1,900						
Non-local Check (Alternative 2)	\$2,000	\$100				\$400 (2)	\$1,500					
Non-proprietary ATM (cash or check)	\$2,000					\$2,000						

B Day = Business Day

(1) This chart assumes the deposits were made in person to an employee of the credit union. For deposits not made in person (night deposit, proprietary ATM, etc.), the credit union may hold funds until the second business day.

(2) Must be available for withdrawal by cash or similar means, however, the entire amount (\$1,900) must be available to pay items presented for payment. Similar means includes electronic payment, issuance of a cashier's or teller's check, or certification of a check, or other irrevocable commitment to pay.

Funds Availability Schedule (Large Deposits Exception Hold)

Existing Accounts	Monday Day 0 B Day 0	Tuesday Day 1 B Day 1	Wednesday Day 2 B Day 2	Thursday Day 3 B Day 3	Friday Day 4 B Day 4	Monday Day 7 B Day 5	Tuesday Day 8 B Day 6	Wednesday Day 9 B Day 7	Thursday Day 10 B Day 8	Friday Day 11 B Day 9	Monday Day 14 B Day 10	Tuesday Day 15 B Day 11
Cash (1)	\$7,000	\$7,000										
Electronic Payment	\$7,000	\$7,000										
US Treasury Check	\$7,000	\$5,000						\$2,000				
US Postal Service Money Order (1)	\$7,000	\$5,000						\$2,000				
LOCAL --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) ---Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$7,000	\$5,000						\$2,000				
NON LOCAL --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) --Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$7,000	\$5,000										\$2,000
On Us Check	\$7,000	\$5,000	\$2,000									
Local Check	\$7,000	\$100	\$5,000					\$1,900				
Non-local Check	\$7,000	\$100				\$5,000						\$1,900

B Day = Business Day

(1) This chart assumes the deposits were made in person to an employee of the credit union. For deposits not made in person (night deposit, proprietary ATM, etc.), the credit union may hold funds until the second business day.

(2) A large deposit exceeds \$5,000 and includes aggregate deposits to all accounts held by the member in one banking day.

Funds Availability Schedule (Other Exception Holds)

Existing Accounts	Monday Day 0 B Day 0	Tuesday Day 1 B Day 1	Wednesday Day 2 B Day 2	Thursday Day 3 B Day 3	Friday Day 4 B Day 4	Monday Day 7 B Day 5	Tuesday Day 8 B Day 6	Wednesday Day 9 B Day 7	Thursday Day 10 B Day 8	Friday Day 11 B Day 9	Monday Day 14 B Day 10	Tuesday Day 15 B Day 11
Cash (1)	\$2,000	\$2,000										
Electronic Payment	\$2,000	\$2,000										
US Treasury Check	\$2,000							\$2,000				
US Postal Service Money Order (1)	\$2,000							\$2,000				
LOCAL --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) ---Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$2,000							\$2,000				
NON LOCAL --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) --Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$2,000											\$2,000
On Us Check	\$2,000		\$2,000									
Local Check	\$2,000							\$2,000				
Non-local Check	\$2,000											\$2,000

B Day = Business Day

(1) This chart assumes the deposits were made in person to an employee of the credit union. For deposits not made in person (night deposit, proprietary ATM, etc.), the credit union may hold funds until the second business day.

(2) A redeposited check does not include a check that has been returned due to a missing endorsement or because it was postdated.

- (3) An account is considered repeatedly overdrawn if on six or more banking days within the preceding six months the account balance was negative or would have become negative had checks or other charges to the account had been paid. An account is also considered to be repeatedly overdrawn if on two or more banking days within the preceding six months the account balance is negative or would have become negative, in the amount of \$5,000 or more, if checks or other charges to the account had been paid.
- (4) Reasonable cause to believe a check is uncollectible requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. Such belief shall not be based on the fact that the check is of a particular class or is deposited by a particular class of persons. The reason for the credit union's belief that the check is uncollectible shall be included in the hold notice.

Funds Availability Schedule (New Accounts Exception Hold)

Existing Accounts	Monday Day 0 B Day 0	Tuesday Day 1 B Day 1	Wednesday Day 2 B Day 2	Thursday Day 3 B Day 3	Friday Day 4 B Day 4	Monday Day 7 B Day 5	Tuesday Day 8 B Day 6	Wednesday Day 9 B Day 7	Thursday Day 10 B Day 8	Friday Day 11 B Day 9	Monday Day 14 B Day 10	Tuesday Day 15 B Day 11
Cash (1)	\$2,000	\$2,000										
Electronic Payment	\$2,000	\$2,000										
--US Treasury Check --US Postal Service Money Order (1) --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) ---Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$2,000	\$2,000										
--US Treasury Check (1) --US Postal Service Money Order (1) --Federal Reserve Bank check (1) --Federal Home Loan Bank Check (1) --State or local Govt Check (1) --Cashier's Check (1) --Certified Check (1) --Teller's Check (1)	\$7,000	\$5,000								\$2,000		

B Day = Business Day

(1) This chart assumes the deposits were made in person to an employee of the credit union. For deposits not made in person (night deposit, proprietary ATM, etc.), the credit union may hold funds until the second business day.

(2) An account is considered a new account during the first 30 calendar days after the account is established. An account is not considered a new account if each member on the account has had, within 30 calendar days before the account is established, another account at the depository credit union for at least 30 calendar days.

NOTE: The "new account" exception does not provide the bank with any hold limitations for on-us, local, and non local checks.